

Message Text

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SUBJECT: LUDLOW JUTE COMPANY INVESTMENT IN INDIA

REF: A) STATE 21123; B) NEW DELHI 1971

SUMMARY: THE EMBASSY HAS ENDEAVORED TO OBTAIN FAVORABLE RESPONSES FROM THE GOI MINISTRY OF FINANCE TO LUDLOW JUTE'S LONG-OUTSTANDING PROFIT REMITTANCE PROBLEM AND THE COMPANY'S EFFORTS TO COMPLY WITH THE FOREIGN EXCHANGE REGULATION ACT OF 1973 REQUIREMENTS. THE MINISTRY HAS SHOWN SOME FLEXIBILITY AND REASONABLY SATISFACTORY COMPROMISE SOLUTIONS APPEAR FEASIBLE. END SUMMARY.

1. DURING THE WEEK OF FEBRUARY 17, 1974, J.C. MAHONEY, ASSISTANT TO THE PRESIDENT, AND BERNARD LEWIS, DIRECTOR, LUDLOW JUTE COMPANY LIMITED, 145 ROSEMARY STREET, NEEDHAM HEIGHTS, MASSACHUSETTS, VISITED NEW DELHI FOR A SERIES OF MEETINGS WITH OFFICIALS TO DISCUSS THE SETTLEMENT OF A LONG STANDING PROFIT REMITTANCE PROBLEM RELATING TO LUDLOW'S INDIAN BRANCH OPERATIONS AND THE IMPLEMENTATION PROCEDURES MADE NECESSARY BY THE FOREIGN EXCHANGE REGULATION ACT OF 1973. DURING THEIR VISIT, MAHONEY AND LEWIS WERE ALSO SCHEDULED TO MEET WITH FINANCE MINISTER CHAVAN BUT THE LIMITED OFFICIAL USE

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APPOINTMENT WAS CANCELLED AT THE LAST MOMENT AS THE

FINANCE MINISTER HAD TO DEPART NEW DELHI ON URGENT OFFICIAL BUSINESS AT SHORT NOTICE. CONSEQUENTLY, CERTAIN LETTERS AND EXHIBITS, PREPARED BY LUDLOW FOR PRESENTATION TO THE FINANCE MINISTER, WHICH REQUESTED APPROVAL FOR REMITTANCE OF THE PROFITS EARNED BY LUDLOW'S INDIAN BRANCH IN THE YEARS PRIOR TO 1950 AND SOUGHT CERTAIN EXEMPTIONS UNDER THE FOREIGN EXCHANGE REGULATION ACT WERE ENTRUSTED TO THE EMBASSY FOR BRINGING TO THE PERSONAL ATTENTION OF THE FINANCE MINISTER WHEN HE RETURNED. IN LINE WITH THE REQUEST OF MESSRS MAHONEY AND LEWIS, THE LETTERS AND OTHER DOCUMENTATION WERE SENT TO THE FINANCE MINISTER ON FEBRUARY 22 AS ATTACHMENTS TO A PERSONAL LETTER FROM AMBASSADOR MOYNIHAN WHICH REQUESTED FAVORABLE GOI CONSIDERATION OF LUDLOW'S REQUESTS.

2. AS A RESULT OF CONTINUING EMBASSY FOLLOW-UP, A REPLY DATED MAY 2, ADDRESSED TO THE AMBASSADOR, HAS BEEN RECEIVED FROM M.G. KAUL, SECRETARY TO THE GOI, MINISTRY OF FINANCE, DEPARTMENT OF ECONOMIC AFFAIRS. THE FOLLOWING IS THE TEXT OF THE KAUL LETTER:

QUOTE: I AM WRITING WITH REFERENCE TO YOUR LETTER DATED THE 22ND FEBRUARY, 1974 TO THE FINANCE MINISTER REGARDING LUDLOW JUTE COMPANY. AS YOU ARE PERHAPS AWARE, WE HAD CONSIDERED THIS MATTER EARLIER AND ADVISED LUDLOW JUTE THAT UNDER EXISTING POLICY THE REINVESTED PROFITS DURING THE PERIOD 1920 TO 1949 HAD ASSUMED THE CHARACTER OF CAPITAL, AND COULD NOT THEREFORE BE REMITTED AS ACCUMULATED PROFITS. THERE HAS SO FAR BEEN NO CHANGE IN THIS POLICY WHICH IS OPERATED BY THE RESERVE BANK OF INDIA AND HAS BEEN IN FORCE FOR THE LAST 10 YEARS OF MORE.

UNDER THE FOREIGN EXCHANGE REGULATION ACT, 1973 THE INDIAN BRANCH OF LUDLOW JUTE COMPANY WILL BE REQUIRED TO SEEK THE APPROVAL OF THE RESERVE BANK OF INDIA FOR CONTINUING ITS EXISTING BUSINESS. IN TERMS OF THE GUIDE LINES ANNOUNCED BY THE GOVERNMENT OF THE ADMINISTRATION OF SECTION 29 OF THE FOREIGN EXCHANGE REGULATION ACT, 1973, LUDLOW JUTE WILL BE REQUIRED TO CONVERT ITSELF INTO A COMPANY INCORPORATED IN INDIA. THE CAPITAL STRUCTURE OF THE PROPOSED COMPANY LIMITED OFFICIAL USE

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AND THE EXTENT OF FOREIGN SHAREHOLDING WILL BE DULY CONSIDERED AT THAT TIME.

THE QUESTION OF REMITTANCE OF THE SURPLUS CAPITAL, IF ANY, BY LUDLOW JUTE CAN BE CONSIDERED AFTER IT CEASES TO OPERATE AS A "BRANCH" IN INDIA IN THE LIGHT OF ITS CAPITAL STRUCTURE. UNQUOTE.

3. TO OBTAIN FURTHER INSIGHT INTO GOI THINKING AND TO DEVELOP ADDITIONAL INFORMATION, A REPRESENTATIVE OF THE EMBASSY INFORMALLY DISCUSSED THE KAUL LETTER WITH APPROPRIATE FINANCE MINISTRY OFFICIALS WHO ARE DIRECTLY CONCERNED WITH THE ISSUES RAISED IN LUDLOW'S LETTER TO MINISTER CHAVAN. ACCORDING TO ONE OF THE OFFICIALS, THERE IS NO POSSIBILITY OF THE GOI BEING PERSUADED TO RECONSIDER ITS STAND ON THE REMITTANCE ISSUE. THE OFFICIAL WONDERED WHY THE ISSUE CONTINUES TO BE RAKED UP ESPECIALLY WHEN THE GOI POSITION ON THIS MATTER HAS BEEN MADE ABUNDANTLY CLEAR TO LUDLOW ON MORE THAN ONE OCCASION IN THE PAST. THE STAND TAKEN BY THE MINISTRY HAS THE SANCTION OF GOI LEGAL EXPERTS WHO REVIEWED LUDLOW'S REQUEST IN 1967-68 AND AGAIN WITHIN THE PAST FEW WEEKS. LUDLOW'S CHANCES OF OBTAINING GOI APPROVAL FOR THE REMITTANCE OF THE FULL AMOUNT OF RS. 20,401,585 DO NOT APPEAR TO BE EVEN REMOTELY PROMISING. WHAT, HOWEVER, DOES SEEM POSSIBLE IS TO NEGOTIATE A COMPROMISE FIGURE ON A MUTUALLY AGREEABLE BASIS. THE LAST PARAGRAPH OF KAUL'S LETTER IS CONSIDERED PARTICULARLY SIGNIFICANT IN THIS RESPECT. SHOULD A NEGOTIATED SOLUTION BE UNACCEPTABLE TO LUDLOW, THE LAST RESORT WOULD BE TO SEEK APPROPRIATE LEGAL REMEDY. SUCH A DRASTIC STEP AT THE PRESENT TIME SHOULD BE CONSIDERED WITH EXTREME CAUTION AS IT COULD LEAD TO SERIOUS CONSEQUENCES AND MIGHT EVEN SEVERELY JEOPARDIZE LUDLOW'S INTERESTS IN INDIA.

4. ACCORDING TO ALL AVAILABLE INDICATIONS, LUDLOW'S REQUEST FOR ADEQUATE TIME AND FLEXIBILITY IN NEGOTIATING ARRANGEMENTS UNDER SECTION 29 OF THE FOREIGN EXCHANGE REGULATION ACT MAY BE EXPECTED TO BE FAVORABLY CONSIDERED. GOI OFFICIALS HAVE STATED IN PRIVATE DISCUSSIONS THAT THE NEW ACT WILL BE ADMINISTERED IN SUCH A WAY AS NOT TO CAUSE UNNECESSARY HARDSHIP TO EXISTING COMPANIES. THE EMBASSY LIMITED OFFICIAL USE

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IS CERTAIN THAT LUDLOW WILL BE GRANTED ALL REASONABLE FACILITIES TO BRING ABOUT A RESTRUCTURING OF ITS OPERATIONS IN INDIA. THE NEED FOR GOI ACCOMMODATION WILL, HOWEVER, ARISE ONLY AFTER LUDLOW HAS MET THE JUNE 30 DEADLINE FOR MAKING APPLICATION TO THE RESERVE BANK FOR CONTINUING ITS EXISTING BUSINESS. THE COMPANY WILL BE WELL ADVISED TO KEEP THE REMITTANCE AND THE BRANCH RESTRUCTURING ISSUES DISTINCT AND SEPARATE. THE LAST PARAGRAPH OF LUDLOW'S EXHIBIT II SUBMITTED TO MINISTER CHAVAN SEEMED TO INDICATE, ACCORDING TO THE EMBASSY'S FINANCE MINISTRY CONTACT, THAT THE COMPANY WAS TRYING TO LINK THE SETTLEMENT OF THE REMITTANCE ISSUE AS A PRECONDITION TO AFFECTING THE CHANGES REQUIRED BY THE GUIDELINES FOR ADMINISTERING THE ACT.

5. ACTION REQUESTED: THE DEPARTMENT IS REQUESTED TO

REVIEW THE SUBSTANCE OF THIS TELEGRAM WITH MAHONEY AND
LEWIS. THEY SHOULD BE ADVISED TO KEEP THE EMBASSY INFORMED
OF ANY ACTION THAT THEY TAKE ON THE TWO ISSUES INVOLVED
SO THAT APPROPRIATE AND TIMELY EMBASSY SUPPORT AND
ASSISTANCE CAN BE EXTENDED. THEY MAY ALSO BE ADVISED THAT
A VISIT TO INDIA BY BOTH OR EITHER OF THEM WILL BE
NECESSARY TO RESOLVE ADMINISTRATIVE AND OTHER RELATED
MATTERS WITH GOI AGENCIES AFTER APPLICATION IS MADE TO THE
RESERVE BANK OF INDIA FOR CONTINUING EXISTING BUSINESS.
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